

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**AZEL P. SMITH, ET AL.**

**PLAINTIFFS**

**VERSUS**

**CIVIL ACTION NO. 3:01CV367-B-N**

**CITY OF JACKSON, ET AL.**

**DEFENDANTS**

**AMENDED ANSWER AND AFFIRMATIVE DEFENSES**

COME NOW the Defendants City of Jackson, Mississippi and the City of Jackson Police Department, by and through counsel, and file this their Answer and Affirmative Defenses to the Complaint filed herein and would show unto the Court the following, to wit:

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

The Complaint is barred by the applicable statute of limitations.

**THIRD DEFENSE**

The Defendant incorporates and alleges each and every defense available pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

**FOURTH DEFENSE**

The process issued is insufficient.

**FIFTH DEFENSE**

The service of process is insufficient.

**SIXTH DEFENSE**

The court lacks jurisdiction over the subject matter.

**SEVENTH DEFENSE**

The court lacks jurisdiction over the person of the Defendants.

**EIGHTH DEFENSE**

At all times and as to all matters material to the Complaint, the Defendants acted reasonably and in accordance with law and did not breach any duty owed to the Plaintiffs.

**NINTH DEFENSE**

The Defendants and its employees, agents, and servants, at all times relevant hereto, used the degree of care required of them under law and are not liable in damages to the Plaintiffs.

**TENTH DEFENSE**

Any injury, damage, or deprivation alleged or suffered by the Plaintiffs was the result of the Plaintiffs' failure to act reasonably to avoid or mitigate such injury, damage or deprivation.

**ELEVENTH DEFENSE**

If any injury, damage, or deprivation was suffered by the Plaintiffs, then the Plaintiffs contributed to such injury, damage, or deprivation and failed to act reasonably to avoid or mitigate said injury, damage, or deprivation because the Plaintiffs would have had the last clear chance to avoid the accident as alleged herein.

**TWELFTH DEFENSE**

The actions or inactions on the part of the Plaintiffs or of third parties was the sole, proximate and only cause of the incident complained of and the alleged damages sustained by the Plaintiffs, if any. That in the alternative, the actions or inactions on the part of the plaintiffs or third parties amounted to an intervening cause and as such, constitute the sole, proximate and only cause of the incident complained of and the damages sustained by the Plaintiffs, if any.

### **THIRTEENTH DEFENSE**

If the actions or inactions on the part of the Plaintiffs or third parties was not the sole, proximate and only cause of the incident complained of and the alleged damages sustained by the Plaintiffs, then actions or inactions on the part of the Plaintiffs or third parties caused and contributed to the incident complained of and the alleged damages sustained by the Plaintiffs. Thereby, any damages which the Plaintiffs would otherwise be entitled must be reduced in degree and to the proportion that the actions or inactions of the Plaintiffs or third parties caused or contributed to the incident.

### **FOURTEENTH DEFENSE**

The Defendant asserts any and all defenses available to it under Miss. Code Ann. §85-5-7.

### **FIFTEENTH DEFENSE**

Plaintiff is not entitled to any injunctive relief because he has an adequate remedy at law.

### **SIXTEENTH DEFENSE**

The actions and conduct complained of do not violate any constitutional, federal or statutory right of which these Defendants should have reasonably been aware.

### **SEVENTEENTH DEFENSE**

The Plaintiffs' claims are barred because he failed to exhaust his administrative remedies available under Title VII and 180 days have now passed since the alleged act of discrimination upon which his claim is based occurred.

### **EIGHTEENTH DEFENSE**

The Plaintiffs are not entitled to recover any compensatory damages because his Complaint fails to allege disparate treatment.

**NINETEENTH DEFENSE**

The Plaintiffs are not entitled to recover any compensatory damages because they failed to file individual charges of discrimination which deprived the City of its opportunity to conciliate the claim before the Equal Employment Opportunity Commission.

**TWENTIETH DEFENSE**

With respect to each claim asserted in this action, if any Plaintiff became a debtor in bankruptcy after that claim accrued, and if the Plaintiff failed to disclose the claim in the bankruptcy proceeding for the benefit of her creditors, then the Plaintiff is estopped to assert that claim in this action.

**TWENTY-FIRST DEFENSE**

If any Plaintiff has been a debtor in bankruptcy since the accrual of a claim asserted in the Complaint, then with respect to any claim not abandoned to him/her by the trustee, the Plaintiff lacks standing to sue upon that claim, since it is the property of the estate.

**TWENTY-SECOND DEFENSE**

Without waiving any of the above defenses, the responding Defendant would answer the allegations contained in the Complaint, paragraph by paragraph. as follows:

**1.**

The allegations of the Paragraph titled "Introduction" are denied.

**2.**

The allegations of Paragraph One are denied.

**3.**

The allegations of Paragraph Two are denied.

**4.**

The allegations of Paragraph Three are denied.

**5.**

The allegations of Paragraph Four are denied.

**6.**

The allegations of Paragraph Five are denied.

**7.**

The allegations of Paragraph Six are denied.

**8.**

The allegations of Paragraph Seven are denied.

**9.**

The allegations of Paragraph Eight are denied.

**10.**

The allegations of Paragraph Nine are denied.

**11.**

The allegations of Paragraph Ten are denied.

**12.**

The allegations of Paragraph Eleven are denied.

**13.**

The allegations of Paragraph Twelve are denied.

**14.**

The allegations of Paragraph Thirteen are denied.

**15.**

The allegations of Paragraph Fourteen are denied.

**16.**

The allegations of Paragraph Fifteen are denied.

**17.**

The allegations of Paragraph Sixteen are denied.

**18.**

The allegations of Paragraph Seventeen are denied.

**19.**

The allegations of Paragraph Eighteen are denied.

**20.**

The allegations of Paragraph Nineteen are denied.

**21.**

The allegations of Paragraph Twenty are denied.

**22.**

The allegations of Paragraph Twenty-one are denied.

**23.**

The allegations of Paragraph Twenty-two are denied.

**24.**

The allegations of Paragraph Twenty-three, and all of its subparts a-f, are denied.

WHEREFORE, PREMISES CONSIDERED, the Defendants request that the Complaint filed herein be dismissed with prejudice and that the Defendants be awarded all costs associated with defending this action..

Respectfully submitted, this 4<sup>th</sup> day of April, 2006.

CITY OF JACKSON ET AL

BY: s/R. Pepper Crutcher, Jr.

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**CERTIFICATE OF SERVICE**

I, the undersigned counsel, do hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of such filing to the following:

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This the 4<sup>th</sup> day of April, 2006.

s/R. Pepper Crutcher, Jr.  
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R. PEPPER CRUTCHER, JR.